

90th Legislative Session – 2015

Committee: House Judiciary

Wednesday, February 18, 2015

P - Present
E - Excused
A - Absent

Roll Call

P Hunt
P Johns
P DiSanto
P Haugaard
P Langer
P Latterell
P Peterson (Kent)
P Russell
P Westra
P Gibson
P Killer
P Stevens, Vice-Chair
P Mickelson, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Mark Mickelson, Chair.

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, FEBRUARY 11, 2015.

Moved by: Hunt
Second by: Peterson (Kent)
Action: Prevailed by voice vote.

HB 1023: prohibit a state officer or employee from having an interest in any contract that the state employee or officer approved, awarded, or administered for one calendar year following termination of state employment.

MOTION: TO TABLE HB 1023

Moved by: Gibson
Second by: Langer
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Hunt, Johns, DiSanto, Haugaard, Langer, Latterell, Peterson (Kent), Russell, Gibson, Killer, Stevens, Mickelson

Excused: Westra

Chair Mickelson passed the gavel to Vice-Chair Stevens

HB 1064: prohibit unlawful self-dealing by state officers and employees.

Presented by: Representative G. Mark Mickelson
Proponents: Tony Venhuizen, Office of Governor
Nathan Lukkes, SD Board of Regents

MOTION: AMEND HB 1064

1064sc

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. A state officer or employee may not solicit nor accept any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of or the terms of a contract by the state agency the officer or employee serves.

Section 2. That § 5-18A-17 be amended to read as follows:

5-18A-17. No state officer or employee who approves, awards, or administers a contract ~~involving the expenditure of public funds or the sale or lease of property on behalf of a state agency,~~ may have an interest in a contract or derive a direct benefit from a contract that is within the scope of the officer's or employee's official duties, ~~nor for a one-year period following the end of their employment or position as a state officer may the officer or employee derive a direct benefit as a result of such contract except as provided in section 4 of this Act. In addition, no such officer or employee may enter into any contract other than a contract of employment with any state agency for a period of one year following their leaving office or employment except as provided in section 5 of this Act.~~ This prohibition includes any state officer or employee who, in his or her official capacity, recommends the approval or award of the contract or who supervises a person who approves, awards, or administers the contract. This prohibition does not include any state officer who

serves without compensation or who may be paid per diem pursuant to § 4-7-10.4. ~~Any contract made in violation of this section is void. Any state officer or employee who knowingly violates this section is guilty of a Class 2 misdemeanor.~~

Section 3. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

A state officer or employee derives a direct benefit from a contract if the state officer or employee, the officer's or employee's spouse, or other persons with whom the state officer or employee lives and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of a for-profit entity that derives income or commission directly from the contract or acquires property under the contract.

A state officer or employee does not derive a direct benefit from a contract based solely on the value associated with the officer's or employee's investments or holdings, or the investments or holdings of other persons with whom the state officer or employee lives and commingles assets.

Section 4. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

A governing body may authorize an officer or employee whose responsibilities include approving, awarding, or administering a contract on behalf of a state agency or supervising any employee who has these responsibilities to be a party to or derive a direct benefit from a contract if:

- (1) The officer or employee has provided full written disclosure to the governing body;
- (2) The governing body has reviewed the essential terms of the transaction or contract and the state officer's or employee's role in the contract or transaction; and
- (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to the public interest.

The authorization shall be in writing. Any authorization given pursuant to this section is a public

record. Each authorization shall be filed with the commissioner of the Bureau of Human Resources, who shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee.

Section 5. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Within the one-year period prohibiting any contract with a state agency, the governing body of the state agency may approve a former officer or employee to contract with any state agency if the governing body determines that the transaction and the terms of the contract are fair, reasonable, and are in the best interests of the public. The authorization shall be in writing.

Any approval given pursuant to this section is a public record. Each approval shall be filed with the commissioner of the Bureau of Human Resources, who shall compile the approvals and present them annually for review by the Government Operations and Audit Committee.

Section 6. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

A state officer or employee who knowingly violates the provisions of section 1 or section 2 of this Act commits malfeasance in office. The state officer or employee shall be removed from office or employment and such person is guilty of a Class 1 misdemeanor. Any benefit to a person or entity derived from the person's knowing violation of section 1 or section 2 of this Act is subject to forfeiture. Any contract made in violation of section 1 or section 2 of this Act is voidable by the governing body.

Section 7. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act affects a specific conflict of interest prohibition that applies to specific employees.

Section 8. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

The terms used in this Act mean:

- (1) "State agency," each board, commission, committee, council, department, division, office, task force, or agency of state government. The term, state agency, does not include any authority created by the Legislature or executive order;
- (2) "State officer," a person who is elected or appointed to serve a state agency. The term

does not include a member of the Legislature, a person who serves without compensation, or a person who is only paid per diem in accordance with § 4 7 10.4;

- (3) "Governing body," the Executive Board of the Legislative Research Council, the Supreme Court, the Board of Regents, the Public Utilities Commission, each constitutional officer, the Board of Trustees of the South Dakota Retirement System, the State Investment Council, or the Governor;
- (4) "Administer a contract," decision making or substantive influence on the decision making concerning the manner, method, or means of a contract's performance or enforcement such as the ability to terminate, suspend, change terms, or evaluate the counter-party's performance under the contract. The term does not include review and approval of contract documents for matters of style and form or conformity with authorizing legislation or rule, mere clerical tasks such as posting, making, or reconciling payments or accounts under the contract, collecting or reporting fiscal data or other information in relation to the contract's performance, or relaying substantive decisions made by another person or body as to the manner, method, or means of a contract's performance or enforcement."

Moved by: Hunt
Second by: Latterell
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1064 AS AMENDED

Moved by: Hunt
Second by: Latterell
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Hunt, Johns, DiSanto, Haugaard, Langer, Latterell, Peterson (Kent), Russell, Gibson, Killer, Stevens, Mickelson

Excused: Westra

Gavel was passed back to the Chair

HB 1225: prohibit the unauthorized commercial use of a personality's right of publicity and provide a civil remedy therefor.

Presented by: Representative Elizabeth May
Proponents: Pearl Means, Self

Standford Adelstein, Self - Telephone Testimony
Melissa Patack, Self

MOTION: AMEND HB 1225

1225ra

On page 1, line 9, of the printed bill, after "person" insert "who is a citizen of this state, or who died domiciled in this state".

On page 1, line 10, after "mannerism" insert "identifies a specific person and".

On page 1, line 12, after "purpose" insert "that serves to identify a specific person".

On page 2, line 2, delete "one hundred" and insert "seventy".

On page 2, line 4, after "kin" insert "or other person or entity that owns the right of publicity".

On page 2, line 8, after "personality" insert "and the personality has not assigned his or her rights".

On page 2, line 9, after "kin" insert "or other owner of the right of publicity".

On page 2, line 16, delete everything after "(3)" and insert "In determining a defendant's profits, the plaintiff is required to prove the gross revenue attributable to the unauthorized use, and the defendant is required to prove properly deductible expenses; and".

On page 2, delete line 17.

On page 2, line 19, after "treble" insert ", but not computed on the defendant's profits,".

On page 2, line 19, after "damages" insert ", as the plaintiff elects".

On page 2, line 22, after "composition," insert "audio visual work,".

On page 3, line 5, delete "and".

On page 3, line 6, after "section" insert "; and

(6) Any use of a right of publicity before December 31, 2014".

On page 3, line 13, after "interest" insert "including unauthorized biographies".

On page 3, after line 17, insert:

" Section 10. A successor in interest to the right of publicity of a deceased personality pursuant to this Act or a licensee thereof may not recover damages or equitable relief for a use prohibited pursuant to this Act that occurs before the successor in interest registers a claim of right of publicity pursuant to section 11 of this Act.

Section 11. Any person claiming to be a successor in interest to the right of publicity of a deceased personality pursuant to this Act or a licensee thereof may register that claim with the secretary of state on a form prescribed by the secretary of state and upon payment of a one hundred dollar filing fee to the secretary of state. The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

Upon receipt and after filing of any document pursuant to this section, the secretary of state shall post the document along with the entire registry of persons claiming to be a successor in interest to the right of publicity of a deceased personality or a registered licensee pursuant to this section on the secretary of state's website.

The secretary of state may microfilm or reproduce by other technique, any filing or document filed pursuant to this section and may then destroy the original filing or document. The secretary of state may destroy the microfilm or other reproduction of the filing or document seventy years after the death of the personality named therein.

A claim registered pursuant to this section is a public record.

Section 12. The provisions of this Act constitute the sole and exclusive bases regarding a misappropriation of name, image, or likeness of a personality and the personality's right of publicity, and any remedy for a violation of such rights. "

Moved by: Johns
Second by: Latterell
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1225 AS AMENDED

Moved by: Hunt
Second by: Peterson (Kent)
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Hunt, Johns, DiSanto, Haugaard, Langer, Latterell, Peterson (Kent), Russell, Gibson, Killer, Stevens, Mickelson

Excused: Westra

HB 1212 was withdrawn at the request of the prime sponsor.

HB 1205: provide for the certification by a chief law enforcement officer of the transfer of certain firearms.

Presented by: Representative Jim Stalzer

Opponents: Mike Leidholdt, Hughes Co. Sheriff, self
Staci Ackerman, South Dakota Sheriffs Association

MOTION: AMEND HB 1205

1205sb

On page 3, line 14, of the printed bill, delete everything after "certification" and insert ".".

Moved by: Hunt

Second by: Latterell

Action: Was not acted on.

MOTION: SUBSTITUTE MOTION AMEND HB 1205

1205sc

On page 3, line 14, of the printed bill, delete everything after "costs" and insert ".".

Moved by: Johns

Second by: Langer

Action: Prevailed by voice vote.

MOTION: AMEND HB 1205

1205sa

On page 2, line 8, of the printed bill, after "firearm" insert "or that no substantial evidence supports the law enforcement officer's determination to deny the certification".

On page 2, line 10, after "determination" insert "if requested".

On page 3, line 13, delete "shall" and insert "may".

Moved by: Stevens
Second by: Westra
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1205 AS AMENDED

Moved by: Hunt
Second by: Latterell
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Hunt, Johns, DiSanto, Haugaard, Langer, Latterell, Peterson (Kent), Russell, Westra, Gibson, Killer, Stevens, Mickelson

HB 1163: reinstate certain civil actions for childhood sexual abuse.

Presented by: Representative Steve Hickey
Opponent:: Brett Koenecke, SD Synod, Evangelical Lutheran Church In America

MOTION: AMEND HB 1163

1163ja

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 26-10-25 be amended to read as follows:

26-10-25. Any civil action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever period expires later. ~~However, no person who has reached the age of forty years may recover damages from any person or entity other than the person who perpetrated the actual act of sexual abuse."~~

Moved by: Haugaard
Second by: Latterell
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DEFER HB 1163 TO THE 41ST LEGISLATIVE DAY

Moved by: Stevens
Second by: Hunt
Action: Prevailed by roll call vote. (7-6-0-0)

Voting Yes: Hunt, DiSanto, Langer, Peterson (Kent), Russell, Stevens, Mickelson

Voting No: Johns, Haugaard, Latterell, Westra, Gibson, Killer

MOTION: ADJOURN

Moved by: Langer
Second by: Westra
Action: Prevailed by voice vote.

Liz Markley
Committee Secretary

G. Mark Mickelson, Chair